

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

TONY BUI et al.,

Plaintiffs and Appellants,

v.

LOC HOANG BACH et al.,

Defendants and Respondents.

G060197

(Super. Ct. No. 30-2020-01129597)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Glenn R. Salter, Judge. Reversed and remanded with instructions.

Enenstein Pham & Glass and Teri T. Pham; Hoyt E. Hart, II, for Plaintiffs and Appellants.

Adina T. Stern for Defendants and Respondents.

INTRODUCTION

Leaders lead where others follow. But what happens when there is no longer anyone for those others to follow? In the case of the Buddhist temple Bao Quang, the answer has been . . . well . . . chaos. Once its venerable leader and founding monk died after nearly 30 years of devoted service, an internecine battle for control of the temple ensued. Our job in this case is not to decide who wins that battle. It is to decide whether there is a role for the courts in it. We conclude there is.

Appellants are long-time dues-paying congregants and volunteers at the temple, who allege two of the temple's directors have wrongfully sought to override the will of their late leader by forcing out his chosen successor in order to take power over the institution (and its finances) for themselves. Summary judgment in the matter was granted to the directors due to lack of standing. We reverse and hold that appellants do have standing to move forward in their lawsuit, at least in part.

FACTS

Tung Thanh Duong¹ was a Buddhist abbot who started a temple in Garden Grove in March of 1990, incorporated it as the Vietnamese-American Center for Buddhism and Charitable Services – Bao Quang, and operated it as Bao Quang temple.² The temple became involved or affiliated with an organization called the World Vietnamese Buddhist Order (WVBO). The WVBO and its council of abbots, known as the Shanga Leadership Board, approved abbots to preside over participating temples. According to its chairman, Abbot Thich Chon Thanh (Abbot Chon), the WVBO governs the selection of abbots for Vietnamese Buddhist temples in Orange County.

¹ We have seen the abbot variously called Tung Thanh Duong, Hoa Thuong Thich Quang Thanh, Thich Quang Thanh, and Thich Quang throughout the record. In our ignorance of appropriate cultural naming conventions, we adhere herein to the nomenclature adopted by the parties by referring to the abbot simply as “Abbot Thanh.”

² In 2002, the temple moved to its present location in Santa Ana.

Abbot Thanh was the president of the WVBO Administrative Council, and head abbot at the temple. Abbot Thanh's ecclesiastical duties at the temple required him to conduct services, maintain the grounds of the temple, and otherwise manage it day to day. But since it had been incorporated as a religious nonprofit corporation, authority over the temple's activities and operations was vested in its board of directors. Abbot Thanh served on the board from at least January 2001 to his death in June 2019.

By most accounts, Abbot Thanh was a respected figure, and temple congregants, including fellow board members, coalesced behind his leadership. But as is common with venerated leaders, his death left behind a void, a power struggle, and – unfortunately for us – a very unclear factual picture.

This litigation is between two of the factions that formed in the months following Abbot Thanh's death. One faction is headed by appellants Tony and Phil Bui, alleged to be congregants who often assisted Abbot Thanh in liaising with the congregation, paying bills, and collecting money. The other faction is led by respondents Loc Hoang Bach and his sister Christie Hoang Bach. The Bachs, along with their mother, were well-known volunteers in the temple who had developed a close relationship with Abbot Thanh. They claim Abbot Thanh chose them in January 2001 to fill two vacancies on the board of directors, roles they continue to occupy to the present day.

It seems that on June 5, 2019, with his health deteriorating, Abbot Thanh held a meeting, at which he designated his nephew, a monk named Cuong Cao Duong (Cao), as his desired successor as abbot. This appointment was approved by WVBO at an ad hoc meeting on June 18, 2019, a little over a week after Abbot Thanh's death. And according to Abbot Chon and Tony Bui, Cao was "formally confirmed" as the temple's abbot at a September 16, 2019 meeting, which was attended by Loc Hoang Bach and his sister's husband, Dai Mai.

Yet there seems to be disagreement among the parties in this litigation as to whether Cao is now the temple's abbot. The Buis and their supporting witnesses certainly believe he is. However, the Bachs appear hesitant to accord him the title. They refer to him not as Abbot Cao but as Cao. They acknowledge only that he is "provisional" successor, and make no mention of the September 16, 2019 meeting.

This lawsuit was precipitated by what the Buis saw as the Bachs' usurpation of authority over the temple after Abbot Thanh's death. After Cao's alleged confirmation as abbot, the Buis say the Bachs began an ongoing campaign to oust Cao by claiming they, and not the congregants, had sole decision-making authority and the power to appoint the next abbot. The Bachs, for their part, contend Cao has been engaging in misconduct, causing strife, and refusing to cooperate.

On February 4, 2020, the temple filed an unlawful detainer complaint to begin evicting Cao from his dormitory on temple grounds. That same day, the Buis, individually and as representatives for the temple, filed a complaint and petition for relief under the Corporations Code against the Bachs.³ The pleading alleged three causes of action. The first cause of action under the Nonprofit Religious Corporation Law (NRCL) (§§ 9110 et seq.) seeks an order from the court calling for supervised elections for the board of directors. The Buis allege the temple is a membership organization, and as such, they are entitled to such an election. The second cause of action seeks an accounting of the Bachs' actions as directors and imposition of a constructive trust over any monies wrongfully used. The third seeks declaratory and injunctive relief. The Buis ask for a judicial determination of their rights and the rights of all temple members, and the obligations of the Bachs. They also ask the court to determine the Bachs lack sole discretion to evict Cao.

³

All further statutory references are to the Corporations Code.

The Bachs moved for summary judgment, arguing the Buis lack standing because they are not directors and because the temple is a non-membership religious nonprofit corporation. The trial court agreed with this argument and granted summary judgment.

DISCUSSION

We review a grant of summary judgment de novo. (See *Huber v. Jackson* (2009) 175 Cal.App.4th 663, 671.) On appeal, the Buis make two main arguments. First, they say there were triable issues of material fact as to whether the temple was a membership corporation and whether the Bachs were the rightful directors. Second, they claim they do have standing, under the NRCL and the First Amendment guaranteeing free exercise of religion, to bring the lawsuit. Though we think standing is lacking under the NRCL, we conclude the Buis do have standing in their capacity as temple-goers, and reverse for that reason.

I. Court Handling of Religious Matters

“The United States Supreme Court has held that the applicable federal constitutional restrictions, in the context of litigation involving religious institutions, dictate that the role of the civil courts is “severely circumscribe[d].” (*Jones v. Wolf* (1979) 443 U.S. 595, 602 (*Jones*); *Serbian Eastern Orthodox Diocese v. Milivojeovich* (1976) 426 U.S. 696, 709 (*Serbian Eastern*); *Presbyterian Church v. Hull Church* (1969) 393 U.S. 440, 449 (*Hull*).) The prohibition against civil court participation in sectarian disputes extends to issues involving membership, clergy credentials and discipline, as well as religious entity governance and administration. [Citations.] Civil courts cannot interfere in disputes relating to religious doctrine, practice, faith, ecclesiastical rule, discipline, custom, law, or polity. (*Serbian Eastern, supra*, 426 U.S. at pp. 708–709, 713; *Hull, supra*, 393 U.S. at p. 449; *Rosicrucian Fellow. v. Rosicrucian Etc. Ch.* (1952) 39 Cal.2d 121, 131–132.) The term ‘polity’ has been described by one Court of Appeal as follows: “Polity refers to the general governmental structure of a church, the organs of

authority and the allocation and locus of its judicatory powers as defined by its own organic law.” [Citations.]’ (*Barr v. United Methodist Church* (1979) 90 Cal.App.3d 259, 267, fn. 6.)” (*New v. Kroeger* (2008) 167 Cal.App.4th 800, 815.)

“Recognizing that churches, their congregations and hierarchy exist and function within the civil community, however, it is acknowledged that they are as amenable as other societal entities to rules governing property rights, torts and criminal conduct. (*Watson v. Jones* (1872) 80 U.S. 679, 732-733.) [¶] The difficulty comes in determining whether a particular dispute is ‘ecclesiastical’ or simply a civil law controversy in which church officials happen to be involved.” (*Higgins v. Maher* (1989) 210 Cal.App.3d 1168, 1170 (*Higgins*).) “Where a schism has developed within a church, resulting in dispute as to who holds ultimate authority for congregational or corporate decisions, civil courts are unavoidably put to the task of identifying the true or legitimate authority. [Citation.] To do otherwise would be to deny ‘all legal protection to churches and [allow] church disputes to be settled by physical force.’ [Citation.] This is true even though the dispute centers around the employment of the preacher.” (*Higgins, supra*, 210 Cal.App.3d at p. 1173.)

Thus, we are cognizant of our obligation to avoid unnecessary and unconstitutional intrusion into doctrinal or faith-based affairs but also aware that our authority must sometimes be invoked. In this case, it seems the dispute between the litigants is, at turns, both ecclesiastical and civil. The Buis, as representatives of 59 other temple congregants, want to hold elections to determine the post-Abbot Thanh leadership direction of their temple. They are concerned about the Bachs’ management of temple finances, and they do not believe the Bachs have the authority to expel the temple’s abbot, as this would properly be the role of the WVBO. The Bachs claim they are Abbot Thanh’s chosen leaders for the board and pursuant to the corporate documents, they, and not the congregants, have the power to run all temple affairs. We see no reason the court

cannot resolve some of the technical disputes and provide direction to the parties moving forward.

II. Standing

The ultimate issue for our resolution is whether the Buis and Cao have standing in this lawsuit. The complaint cites sections 9223, 9411, 9414, and 9418 as the legal basis for their first cause of action. Under section 9223, the superior court may remove a director from office and bar him or her from seeking reelection “in case of fraudulent acts.” (§ 9223, subd. (a).) Such a suit can be brought by “a director, or twice the authorized number . . . of members” under section 5036, or by the attorney general. (*Id.*, subds. (a) & (b).) Since the Buis concede they are not directors, they can only bring such an action if they constitute members. Under section 5056 of the NRCL, a “member” is “any person who, pursuant to a specific provision of a corporation’s articles or bylaws, has the right to vote” in director elections, asset dispositions, mergers, dissolutions, or changes to the articles and bylaws. (§ 5056, subd. (a).) Section 5036 provides that an authorized number of members is five percent of the voting power of a corporation unless other exceptions apply. (§ 5036, subd. (a).)

For purposes of the NRCL, membership in a nonprofit religious corporation is determined by the articles or bylaws. Importantly, “[i]n the absence of any provision in its articles or bylaws providing for members, a corporation shall have no members.” (§ 9310, subd. (a).) A nonprofit religious corporation may explicitly give members different rights than those provided in the NRCL (see § 9330), and it may use the term “members” to refer to people associated with the organization who have no voting power. (See § 9332, subd. (a).) Thus, the parameters for membership can be tailored to fit the requirements and needs of the religious institution.

The temple’s bylaws are a matter of great dispute. The Buis attached to their complaint an unsigned set of bylaws which provided for general membership and a board of 20 directors elected to two-year terms by the membership. These unsigned

bylaws were provided to them by Abbott Chon, who in turn claimed he was given them by Abbot Thanh prior to his death.

The Bachs assert the Buis' bylaws are fakes. They claim no copy of the bylaws could be located after Abbot Thanh's death. Believing the bylaws to be lost, they as directors hired counsel and adopted restated bylaws on October 14, 2019.⁴ However, in 2020, after the litigation began, the Bachs' counsel, Adina Stern, obtained from the Franchise Tax Board a copy of the original 1990 bylaws, which had been submitted some years prior as an attachment to an application for nonprofit tax exemption. When it came time for the trial court below to decide the Bachs' motion for summary judgment, it had before it two competing sets of bylaws.

We no longer have that problem. A little over two weeks after the Buis filed this lawsuit, the temple filed its own action against Cao, which we will call the "Corporate Action."⁵ In the Corporate Action, the parties stipulated as to which bylaws were the temple's original bylaws. The stipulated document is not in our record; however, the description of it in the statement of decision in the Corporate Action closely resembles the 1990 bylaws advanced by the Bachs herein. Those bylaws were signed by purported directors Howard Lam and The Vinh Tran, were undated, and contained language stating the bylaws would "make no provision for members." It would seem, therefore, that the Buis have at least conceded the bylaws they attached to their complaint

⁴ These amended and restated bylaws appear calculated to more brazenly disenfranchise congregants. Unlike previous versions of the bylaws, these bylaws provide for memberships, but of the "nonstatutory" variety; meaning members pay dues and "additional fees" at the whim of the board, yet have no voting rights. And directors essentially decide the length of their own terms with little or no accountability to anyone.

⁵ We grant the Bachs' request for judicial notice of the existence of the Corporate Action and the statement of decision and judgment entered in it.

herein are not operative.⁶ Because the bylaws stipulated to be the originals did not provide for members, the Buis cannot be members for purposes of the NRCL. And, as the trial court correctly concluded, they therefore lack standing to bring petitions as members under sections 9223, 9411, 9414, and 9418.

But from here, we respectfully diverge from the trial court as we do not think the above conclusion ends the inquiry on standing. There are two other causes of action in the complaint, neither of which is dependent on standing under the code. The second cause of action for accounting requires only that the plaintiff has a relationship with the defendant which requires an accounting. (See *Teselle v. McLoughlin* (2009) 173 Cal.App.4th 156, 179.) This relationship need not be fiduciary in nature. (See *Conservatorship of Farrant* (2021) 67 Cal.App.5th 370, 376.) “All that is required is that some relationship exists that requires an accounting. [Citation.] The right to an accounting can arise from the possession by the defendant of money or property which, because of the defendant’s relationship with the plaintiff, the defendant is obliged to surrender.” [Citation.]” (*Ibid.*) As congregants who have paid dues and invested time

⁶ In the Corporate Action, accepting the restated 2019 bylaws as the governing document, the trial court determined the temple’s board of directors has the right to control the temple’s assets, operations, grounds, the collection of donations, use of assets, and the appointment of abbots. Based on this, the Bachs argue the Buis are barred by res judicata or collateral estoppel from relitigating their authority to act for the temple. We think judicial estoppel is the more appropriate doctrine. “Collateral estoppel bars a party from relitigating an issue of ultimate fact that a court already has adjudicated. It deals with the finality of judgment on factual matters that were fully considered and decided. Judicial estoppel, on the other hand, prevents inconsistent positions whether or not they have been the subject of a final judgment. . . . Collateral estoppel deprives a party of the right to relitigate an issue.” (*Jackson v. County of Los Angeles* (1997) 60 Cal.App.4th 171, 182, quoting Comment, *Precluding Inconsistent Statements: The Doctrine of Judicial Estoppel* (1986) 80 Nw.U.L.Rev. 1244, 1247-1248, fns. omitted.) But judicial estoppel applies “when: (1) the same party has taken two positions; (2) the positions were taken in judicial or quasi-judicial administrative proceedings; (3) the party was successful in asserting the first position (i.e., the tribunal adopted the position or accepted it as true); (4) the two positions are totally inconsistent; and (5) the first position was not taken as a result of ignorance, fraud, or mistake.” (*Id.* at p. 183.) The stipulation regarding the applicable bylaws meets the elements of this test, since the trial court in the Corporate Action assumed its truth for purposes of its final analysis. Therefore, we believe the Buis are judicially estopped from arguing their unsigned bylaws are the original ones. However, the trial court in the Corporate Action was not asked to resolve the question of who was on the temple’s board of directors; it was asked to decide what person, entity, or governing body had rights to control the temple’s assets and operations. The trial court also declined to decide who should be appointed abbot. Thus, all of the facts being litigated in this case have not been fully adjudicated in the Corporate Action.

and energy in the temple, the Buis – like any other congregant – are arguably entitled to an accounting of the Bachs’ use of temple monies.

As for declaratory and injunctive relief, the Buis seek a judicial determination of the parties’ respective rights and obligations. At minimum, this would require a determination of who is legitimately on the board of directors at present.⁷ More specifically, the Buis seek to block the eviction of Cao.⁸ Given that Cao has been confirmed as the head abbot at the temple, and was the desired successor to Abbot Thanh, his eviction would almost certainly impact worship at the temple, which consequently impacts the religious freedom of congregants. They have a beneficial interest in these affairs.

DISPOSITION

Summary judgment for the respondents is reversed and the matter remanded to the trial court with instructions to summarily adjudicate only the first cause of action in respondents’ favor and deny summary adjudication of the second and third causes of action. Appellants are to recover their costs on appeal.

BEDSWORTH, ACTING P. J.

WE CONCUR:

MOTOIKE, J.

MARKS, J.*

*Judge of the Orange County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

⁷ For example, the Buis and their supporting witnesses thought it had been decided that elections for new leadership would be held in the spring of 2020. The trial court would need to get to the bottom of this claim.

⁸ Since Cao is the one being evicted, the Bachs’ contention that he states no cause of action rings hollow.